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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KORON LOWE,

Plaintiff,

vs.

COUNTY OF RIVERSIDE; CITY OF
HEMET, Hemet Police Department
Officer DYLAN DETWILER; and
DOES 1-10, inclusive,

Defendants.

CASE No.: 5:24-cv-00169-SSS (SHKx)

[Honorable Sunshine S. Sykes]

**PLAINTIFF KORON LOWE'S
OPPOSITION TO DEFENDANT
COUNTY OF RIVERSIDE'S
MOTION TO STAY THE CASE**

Date: July 26, 2024
Time: 2:00 p.m.
Crtrm.: 2

MEMORANDUM IN OPPOSITION

I. INTRODUCTION

This civil rights action involves uses of force against Plaintiff Koron Lowe by Defendant law enforcement officers, on January 26, 2022. The subject state criminal case includes an alleged homicide that occurred the previous day on January 25, 2022. Plaintiff contends that resolution of those two incidents are unrelated. Further, Plaintiff argues that he was not resisting, delaying, or obstructing (hereinafter “resisting”) at the time of the uses of force against him, even if there was “resisting” sometime prior to the uses of force. The defense position is that this civil rights case should be stayed pending resolution of the criminal matter, pursuant to the abstention doctrine from *Younger v. Harris*, 401 U.S. 37, 49-53 (1971).

However, abstention only applies if: “(1) a state-initiated proceeding is ongoing; (2) the proceeding implicates important state interests; (3) the federal plaintiff is not barred from litigating federal constitutional issues in the state proceeding; and (4) the federal court action would enjoin the proceeding or have the practical effect of doing so, i.e., would interfere with the state proceeding in a way that *Younger* disapproves.” *Joseph v. City of San Jose*, No. 19-CV-01294-LHK, 2020 WL 1031899, at *12 (N.D. Cal. Mar. 3, 2020) (citation omitted).

Plaintiff does not dispute that there is an ongoing state proceeding or that the state’s interest in enforcing its laws is important. Plaintiff contends, however, that he is precluded from litigating his §1983 claims in the criminal proceeding and that the present action for money damages will not enjoin the state proceedings. *See Smith v. Plummer*, 458 F. App’x 642, 643 (9th Cir. 2011); *Gilbertson v. Albright*, 381 F.3d 965, 978 (9th Cir. 2004). In fact, §1983 cases are litigated all the time with pending prosecutions for, among other things, “resisting.” Finally, it is not practical and not in the interest of justice to stay the current civil rights matter. The Court should not allow district attorney decisions to dictate its calendar, especially when there is no indication as to how long the criminal matter may take to resolve.

1 For the following reasons, the *Younger* abstention doctrine does not apply and
 2 the Court should deny the Motion and enforce the current scheduling order.

3 **II. ARGUMENT**

4 **A. Plaintiff Cannot Raise His Civil Rights Excessive Force Claims in** 5 **A State Court Criminal Proceeding**

6 In its analysis, the Court must determine whether Plaintiff is barred from
 7 litigating federal constitutional issues in the criminal proceedings. Plaintiff here is
 8 constructively precluded and, therefore, *Younger* does not apply. Plaintiff is charged
 9 with a violation of Penal Code §148 (“resisting”) for conduct that Plaintiff contends
 10 preceded the officers’ use force against him. As alleged in the Complaint (the only
 11 source of facts for purposes of this motion), at the time of the uses of force, Plaintiff
 12 was not resisting (Doc. 1, Complaint at ¶¶42, 48), despite being charged with
 13 “resisting” sometime on January 26, 2022. Thus, Plaintiff will have no opportunity
 14 to challenge the constitutionality of the uses of force and, therefore, will be deprived
 15 of the opportunity to litigate his important civil rights in the criminal case. Plaintiff
 16 also will be deprived of litigating his *Monell* claims in the criminal case. In essence,
 17 the lack of a connection between the facts underlying the charges and the facts
 18 underlying the uses of force makes an excessive force and *Monell* claims irrelevant
 19 in the State proceedings and effectively bars Plaintiff from raising his Constitutional
 20 claims in the State court. Defendant has not met this factor for abstention.

21 **B. The Federal Court Action Would Not Enjoin the State Proceeding** 22 **or Have the Effect of Doing So**

23 Defendant likewise cannot establish that Federal Court action would enjoin
 24 the State proceeding or have the effect of doing so. Plaintiff’s federal complaint
 25 under §1983 and Fourth Amendment jurisprudence for money damages has no
 26 bearing on whether the State can establish a criminal violation for conduct that
 27 preceded the Constitutional violations. Further, Defendant’s argument that this civil
 28 rights matter would interfere with the state court proceedings is conclusory and

1 unpersuasive. There is no support in the record that this matter will interfere with
2 the state criminal proceedings. Thus, *Younger* Abstention does not apply.

3 In *Joseph v. City of San Jose*, 2020 WL 1031899, at *12, the Court held that it
4 need not abstain from adjudicating plaintiffs’ claims for money damages for Fourth
5 Amendment violations. The Court noted that, “unlike a determination that the civil
6 proceeding itself is constitutionally deficient, a determination that a Fourth
7 Amendment violation occurred and that the [plaintiffs] are entitled to monetary
8 damages would not have the same practical effect as a declaration or injunction on
9 pending state proceedings.” *Id.* at *19. The same applies here. A determination that
10 Plaintiff is entitled to money damages for excessive force that occurred when
11 Plaintiff was not resisting, and that the County is liable under *Monell*, would in no
12 way have the same practical effect as a declaration or injunction on pending state
13 proceedings. The State is free to pursue its action in State court without concern for
14 being enjoined from doing so by the instant lawsuit. Thus, this factor likewise does
15 not compel this Court to abstain.

16 **C. This Federal Civil Rights Action Should Continue as Scheduled**

17 In effect, granting Defendants motion would unnecessarily allow the state
18 court proceeding to interfere with this Court’s scheduling order. A stay on the basis
19 requested by Defendant County would set a new dangerous precedent. A stay would
20 indicate expansion of the doctrine that would prevent civil rights plaintiffs from
21 timely investigating and prosecuting cases merely because a district attorney files a
22 criminal action against the victim of excessive force.

23 Further, the criminal case could go on for years. Especially because it involves
24 a homicide, it could have several appeals that could extend the criminal case for
25 several additional years. Since the “homicide” case and the “resisting” case occurred
26 on different days and are unrelated, the state action could be severed, or counts could
27 be resolved separately—we do not know. Additionally, even if there is a conviction
28 sometime in the future, the Plaintiff may be in custody outside this district making

1 him difficult to communicate with, depose, and testify here. By then, witnesses in
2 this matter may have relocated, their memories assuredly will fade, and Plaintiff's
3 desire for justice would be unfairly delayed for an indefinite period. Finally, the
4 Court has an interest in clearing its docket and of maintaining judicial economy,
5 which is frustrated by a delay, and the public has an interest in the speedy resolution
6 of civil rights matters.

7 It is not practical and not in the best interest of justice to stay this civil rights
8 matter pending resolution of the criminal case. Nevertheless, Defendant County has
9 not demonstrated that a stay is warranted. *See Clinton v. Jones*, 520 U.S. 681, 708
10 (1997) ("The proponent of a stay bears the burden of establishing its need.")

11 **III. CONCLUSION**

12 *Younger* abstention does not apply to stay the instant action because Plaintiff
13 cannot raise his Constitutional arguments in the State court proceedings and because
14 allowing Plaintiff to pursue his Federal claims for relief *would not* enjoin the State's
15 criminal prosecution. The Court should deny Defendant's motion to stay and
16 instruct that the parties continue with the deadlines set in the scheduling order.

17
18 Respectfully submitted,

19 DATED: July 8, 2024

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21 By: /s/ Marcel F. Sincich

22 Marcel F. Sincich

23 Trenton C. Packer

24 *Attorneys for Plaintiff*

CERTIFICATE OF COMPLIANCE

The undersigned counsel of record for Plaintiff certifies that this brief contains 1,213 words, which complies with the word limit of L.R. 11-6.1.

Respectfully submitted,

DATED: July 8, 2024

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By: /s/ Marcel F. Sincich
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